

## **REMARKS:**

Claims 1-94 are currently pending in the application. Claims 1, 2, 5-7, 11, 15, 16, 19-21, 25, 29-32, 35-37, 41, 42, 45, 46, 49-51, 55, 56, 63, 64, 67-69, 73, 74, 78, 79, 82-84, 88, 89, and 91 stand rejected under 35 U.S.C. § 103(a) over Patent No. EP 0070967 to Schmidt et al. ("Schmidt") in view of U.S. Patent No. 5,754,938 to Herz et al. ("Herz") and in further view of Dr. Pattie Maes et al., "AGENTS THAT BUY AND SELL", Communications of the ACM, March 1999, Vol. 42, No. 3 ("Maes"). Claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-28, 33, 34, 38-40, 43, 44, 47, 48, 52-54, 57-62, 65, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92-94 stand rejected under 35 U.S.C. § 103(a) over Schmidt in view of Herz in further view of Maes and in further view of U.S. Patent No. 5,970,479 to Shepherd et al. ("Shepherd").

By this Amendment, independent claims 1, 15, 29, 45, 63, 78, 93, and 94 have been amended to more particularly point out and distinctly claim the Applicant's invention. By making these amendments, the Applicants make no admission concerning the merits of the Examiner's rejection, and respectfully deny any statement or averment of the Examiner not specifically addressed. Particularly, the Applicant reserves the right to file additional claims in this Application or through a continuation patent application of substantially the same scope of originally filed independent claims 1, 15, 29, 45, 63, 78, 93, and 94, and to antedate the above-identified prior art reference. No new matter has been added.

The Applicants respectfully submit that these amendments place the Application in better form for Appeal and do not require a new search. Thus, the Applicant respectfully requests the Examiner to enter these amendments.

## **REJECTION UNDER 35 U.S.C. § 101:**

The Applicants thank the Examiner for withdrawing the 35 U.S.C. § 101 rejection to the specification.

**REJECTION UNDER 35 U.S.C. § 103(a):**

Claims 1, 2, 5-7, 11, 15, 16, 19-21, 25, 29-32, 35-37, 41, 42, 45, 46, 49-51, 55, 56, 63, 64, 67-69, 73, 74, 78, 79, 82-84, 88, 89, and 91 stand rejected under 35 U.S.C. § 103(a) over Schmidt in view of Herz and in further view of Maes. Claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-28, 33, 34, 38-40, 43, 44, 47, 48, 52-54, 57-62, 65, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92-94 stand rejected under 35 U.S.C. § 103(a) over Schmidt in view of Herz in further view of Maes and in further view of Shepherd.

Although the Applicants believe claims 1-94 are directed to patentable subject matter without amendment, the Applicants have amended claims 1, 15, 29, 45, 63, 78, 93, and 94 to more particularly point out and distinctly claim the Applicants invention. By making these amendments, the Applicants do not indicate agreement with or acquiescence to the Examiner's position with respect to the rejections of these claims under 35 U.S.C. § 103(a), as set forth in the Office Action.

The Applicants respectfully submit that Schmidt, Herz, or Maes either individually or in combination, fail to disclose, teach, or suggest each and every element of claims 1, 2, 5-7, 11, 15, 16, 19-21, 25, 29-32, 35-37, 41, 42, 45, 46, 49-51, 55, 56, 63, 64, 67-69, 73, 74, 78, 79, 82-84, 88, 89, and 91. The Applicants further submit that Schmidt, Herz, Maes, or Shepherd either individually or in combination, fail to disclose, teach, or suggest each and every element of claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-28, 33, 34, 38-40, 43, 44, 47, 48, 52-54, 57-62, 65, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92-94. Thus, the Applicants respectfully traverse the Examiners obvious rejection of claims 1-94 under 35 U.S.C. § 103(a) over the proposed combination of Schmidt, Herz, Maes, or Shepherd either individually or in combination.

For example, with respect to amended independent claim 1, this claim recites:

A method of supply chain activity optimization involving multiple enterprises at a buyer computer system, comprising:  
accessing a forecasted demand for at least one item;  
automatically and without user input subsequent to accessing the forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand for the item;

automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;

automatically and without user input subsequent to communicating the proposed flexible trade contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract;

automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the modification to determine whether the modification is acceptable;

automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, accepting the modification if the modification is acceptable; and

subsequent to execution of a flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract. (Emphasis Added).

Amended independent claims 15, 29, 45, 63, 78, 93, and 94 recite similar limitations. Schmidt, Herz, Maes and Shepherd either individually or in combination, fail to disclose each and every limitation of amended independent claims 1, 15, 29, 45, 63, 78, 93, and 94.

For example, the Examiner asserted Schmidt discloses a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computer. Although Schmidt discloses a vendor-managed replenishment contract being manually proposed, studied, and negotiated prior to the initiation of a potential vendor-managed replenishment contract. (Page 30, Lines 19-41). Schmidt does not disclose, teach, or suggest the negotiation of the vendor-managed replenishment contract or any negotiation over the purchase order. However, the Examiner asserts that the cited portions of Schmidt disclose details of the negotiation of the vendor-managed replenishment contract or any negotiation over the purchase order. The Applicants have reviewed Schmidt in

detail, particularly looking for a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computer, relied upon by the Examiner, however, Schmidt fails to disclose a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computer. Thus, the Applicants respectfully traverse the Examiners assertions regarding the subject matter disclosed in Schmidt. The Applicants respectfully direct the Examiner's attention to the cited text of Schmidt which states:

It is an object of the present invention to provide a system that will reconcile the demand and supply aspects of a supply chain.

The Applicants respectfully submit that the Examiner has misdescribed the reconciliation of Schmidt. Schmidt has nothing to do with amended independent claim 1 limitations regarding a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computer. The above-cited text of Schmidt merely describes a process to reconcile demand and supply requirements in a supply chain using the Production-Sales-Inventory. This process only allows a single user, including the teaching of user input, to modify a temporary Production-Sales-Inventory and has nothing to do with the original Production-Sales-Inventory, let alone the interaction of a buyer or seller computer. Thus, Schmidt cannot provide for an optimization or negotiation over a buyer or seller computer, since Schmidt does not even provide for any interaction with the evaluation or negotiation of a buyer or seller computer.

The Applicants further submit that the Office Action acknowledges, and the Applicants agree, that Schmidt fails to disclose the emphasized limitations noted above in amended independent claim 1. Specifically the Examiner acknowledges that Schmidt fails to disclose the buyer or seller computer: (1) automatically generating the proposed flexible trade contracts; (2) automatically communicating the proposed flexible trade contract to a seller computer system; (3) buyer and seller computer systems entering into an automatic collaborative negotiation state; (4) automatically evaluating the buyer computer proposed flexible trade contract and communicating a modification; (5) automatically receiving the modification of the proposed flexible trade contract from the seller computer system; (6) automatically evaluating the modification of the proposed flexible trade contract; (7)

automatically accepting the modification if the modification is acceptable; and (8) conducting all the above steps automatically without user input. (15 July 2005 Office Action, Page 3). However, the Examiner asserts that the cited portions of Herz disclose the acknowledged shortcomings in Schmidt. The Applicants have reviewed Herz in detail, particularly looking for amended independent claim 1 limitations regarding conducting all of the multiple enterprise optimizations with the buyer and seller computer systems automatically and without user input, relied upon by the Examiner. However, Herz fails to disclose a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computer system. Thus, the Applicants respectfully traverse the Examiner's assertions regarding the subject matter disclosed in Herz.

The Applicants respectfully submit that Herz has nothing to do with the amended independent claim 1 limitations regarding: (1) automatically generating the proposed flexible trade contracts; (2) automatically communicating the proposed flexible trade contract to a seller computer system; (3) buyer and seller computer systems entering into an automatic collaborative negotiation state; (4) automatically evaluating the buyer computer proposed flexible trade contract and communicating a modification; (5) automatically receiving the modification of the proposed flexible trade contract from the seller computer system; (6) automatically evaluating the modification of the proposed flexible trade contract; (7) automatically accepting the modification if the modification is acceptable; and (8) conducting all the above steps automatically without user input. Rather Herz discloses a system that monitors stock prices and, when certain stock-performance characteristics are met, automatically places a buy or sell order. (Column 61, Lines 35-39). This approach merely describes a monitoring activity that is able to notify the user of a predetermined stock price. Herz fails to disclose, teach, or suggest that the system that monitors stock prices or notifies a user is in anyway automatically negotiated by the buyer or seller computer system. The Applicants respectfully direct the Examiner's attention to the cited text of Herz which states:

Furthermore, the user can set filter parameters so that the system can monitor stock prices and automatically take certain actions, such as placing buy or sell orders, or paging the user with a notification, when certain stock performance characteristics are met. Thus, the system can

immediately notify the user when a selected stock reaches a predetermined price, without the user having to monitor the stock market activity. (Column 61, Lines 35-42). (Emphasis Added).

The Applicants respectfully submit that the Examiner has mischaracterized the passive filter parameter of Herz. Herz has nothing to do with independent claim 1 limitations regarding the automatic collaborative negotiation of the method of the multiple enterprise optimization at a buyer and seller computer system. The above-cited text of Herz merely describes a passive filter mechanism that notifies a user, not an interactive buyer and seller computer system, to buy stock, sell stock, or page the user, when a stock reaches a static, non negotiated, user predetermined price; meaning the predetermined price is not a negotiated price. Herz, does not teach, suggest, or even hint at this passive filter mechanism is in any way associated with any type of buyer or seller computer system that: (1) automatically generates a proposed flexible trade contracts or even a proposed stock agreement contract; (2) automatically communicates the proposed flexible trade contract or even a proposed stock agreement contract to a seller computer system; (3) buyer and seller computer systems entering into an automatic collaborative negotiation state or any type of stock negotiation state; (4) automatically evaluates the buyer computer proposed flexible trade contract and communicates a modification; (5) automatically receives the modification of the proposed flexible trade contract from the seller computer system or any stock system; (6) automatically evaluates the modification of the proposed flexible trade contract; (7) automatically accepts the modification if the modification is acceptable; and (8) conducting all the above steps automatically without user input.

The Examiner further asserts that the cited portions of Maes disclose the acknowledged shortcomings in Schmidt. The Applicants respectfully traverse the Examiners assertions regarding the subject matter disclosed in Maes. The Applicants respectfully submit that Maes does not disclose each and every limitation of amended independent claim 1 regarding: (1) automatically generating the proposed flexible trade contracts; (2) automatically communicating the proposed flexible trade contract to a seller computer system; (3) buyer and seller computer systems entering into an automatic collaborative negotiation state; (4) automatically evaluating the buyer computer proposed

flexible trade contract and communicating a modification; (5) automatically receiving the modification of the proposed flexible trade contract from the seller computer system; (6) automatically evaluating the modification of the proposed flexible trade contract; (7) automatically accepting the modification if the modification is acceptable; and (8) conducting all the above steps automatically without user input. Rather Maes discloses a system to automate several of the most time-consuming stages of a buying process. The Applicants respectfully direct the Examiner's attention to the cited text of Maes which states:

Buying agents automatically collect information on vendors and products that may fit the needs of the company [i.e. ordering paper supplies...] it is important to recognize [the CBB model used] limitations. [...S]ome beyond the scope of [the] CBB model (such as [...] supply chain management[.] (Page 82). (Emphasis Added).

The Applicants respectfully submit that the Examiner has mischaracterized the buying agent of Maes. Maes has nothing to do with independent claim 1 limitations regarding the automatic collaborative negotiation of the method of the multiple enterprise optimization at a buyer and seller computer system. The above-cited text of Maes merely describes a buying agent to automate several of the time consuming tasks associated with ordering supplies for a company. Maes, does not teach, suggest, or even hint at this buying agent is in any way associated with any type of buyer or seller computer system that: (1) automatically generates a proposed flexible trade contracts or even a proposed stock agreement contract; (2) automatically communicates the proposed flexible trade contract or even a proposed stock agreement contract to a seller computer system; (3) buyer and seller computer systems entering into an automatic collaborative negotiation state or any type of stock negotiation state; (4) automatically evaluates the buyer computer proposed flexible trade contract and communicates a modification; (5) automatically receives the modification of the proposed flexible trade contract from the seller computer system or any stock system; (6) automatically evaluates the modification of the proposed flexible trade contract; (7) automatically accepts the modification if the modification is acceptable; and (8) conducting all the above steps automatically without user input.

The Applicants further submit that the Office Action acknowledges, and the Applicants agree, that Schmidt, Herz, and Maes either individually or in combination, fail to disclose the emphasized limitations noted above in amended independent claim 1. Specifically the Examiner acknowledges that Schmidt, Herz, and Maes fail to disclose a supply chain activity optimization involving multiple enterprises at a buyer and seller computer system: (1) wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply; (2) wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item; (3) updating the forecasted demand for the item and exercising an option in the flexible trade contract based on the updated forecasted demand; (4) calculating a penalty if a seller fails to comply with a term of the flexible trade contract nor wherein communicating each proposed flexible trade contract to the seller computer comprises communicating each proposed flexible trade contract to the seller computer through an intermediary; (5) wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply; (6) a plurality of subcontracts each comprising an option, each option comprising at least one parameter; and (7) tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract nor a tracing module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract. (15 July 2005 Office Action, Pages 10-18). However, the Examiner asserts that the cited portions of Sheperd disclose the acknowledged shortcomings in Schmidt, Herz, and Maes. The Applicants have reviewed Sheperd in detail, particularly looking for amended independent claim 1 limitations regarding a supply chain activity optimization involving multiple enterprises at a buyer and seller computer system, relied upon by the Examiner. However, Sheperd fails to disclose the supply chain activity optimization involving multiple enterprises at a buyer and seller computer system. Thus, the Applicants respectfully traverse the Examiners assertions regarding the subject matter disclosed in Sheperd. The Applicants respectfully direct the Examiner's attention to the cited text of Schmidt which states:

It is important that the assessments as to future outcomes of events are made independently of any other party who could be a counter-party to a



contract. The nature of the pricing and matching, therefore, is totally different to conventional negotiation or bidding as between parties. (Column 3, Lines 59-64). (Emphasis Added).

The Applicants respectfully submit that the Examiner has mischaracterized the negotiation process of Sheperd. Sheperd has nothing to do with amended independent claim 1 limitations regarding a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computer. The above-cited text of Sheperd merely describes a process that excludes all other parties to a contract, made independently of any other party. Furthermore, Shepherd merely discloses a system that automatically secures agreement of stakeholders of an options contract seeking to trade the options contract. Shepherd fails to disclose, teach, or suggest specific steps in the above limitations of independent claim 1, during the automatic negotiation of the buyer or seller computer.

The Applicants respectfully submit that the Office Action has failed to properly establish a *prima facie* case of obviousness based on the proposed combination of Schmidt, Herz, Maes, and Shepherd. The Office Action has not shown the required teaching, suggestion, or motivation in these references or in knowledge generally available to those of ordinary skill in the art at the time of the invention to combine these references as proposed. The Office Action merely states that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schmidt to include Herz, Maes, and Shepherd in order to include the buyer or seller computer automatically generating the proposed flexible trade contracts, automatically communicating the proposed flexible trade contract, automatically receiving the modification of the proposed flexible trade contract from the seller or buyer computer system, automatically evaluating the modification of the proposed flexible trade contract, automatically accepting the modification if the modification is acceptable in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

The Applicants further submit that these purported advantages relied on by the Examiner of reducing the cost of the procurement units and reducing the time needed to

obtain the items are nowhere disclosed, taught, or suggested in Schmidt, Herz, Maes, and Shepherd either individually or in combination. The Examiner asserts that the cited portions of Herz provide these purported advantages relied on by the Examiner. The Applicants respectfully direct the Examiner's attention to the cited text of Herz which states:

It is a problem in the field of electronic media to enable a user to access information of relevance and interest to the user without requiring the user to expend an excessive amount of time and energy searching for the information. Electronic media, such as on-line information sources provide a vast amount of information to users, typically in the form of "articles" each of which comprises a publication item or document that relates to a specific topic. (Column 1, Lines 44-51). (Emphasis Added).

The Applicants respectfully submit that the Examiner has mischaracterized Herz. The above-cited text of Herz merely describes a user gaining access to information sources, such as on-line articles, publications, or documents that each relate to a specific topic of which the user is searching for. Thus, the Applicants respectfully request the examiner to point to 'other' portions of Schmidt, Herz, Maes, or Shepherd which contain the teaching, suggestion, or motivation to combine these references for the purpose of reducing the cost of the procurement units and reducing the time needed to obtain the items. A recent Federal Circuit case makes it crystal clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. In re Lee, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. Id. at 1434-35. Thus, the Office Action fails to provide proper motivation for combining the teachings of Schmidt, Herz, Maes, or Shepherd either individually or in combination.

Amended independent claim 1 is considered patentably distinguishable over the proposed combination of Schmidt, Herz, and Maes for at least the reasons discussed above. With respect to amended independent claims 15, 29, 45, 63, and 78 each of these claims includes limitations similar to those discussed above in connection with amended

independent claim 1. Thus, amended independent claims 15, 29, 45, 63, and 78 are considered patentably distinguishable over the proposed combination of Schmidt, Herz, and Maes for at least the reasons discussed above in connection with amended independent claim 1.

Amended independent claim 93 and 94 are considered patentably distinguishable over the proposed combination of Schmidt, Herz, Maes, and Shepherd for at least the reasons discussed above in connection with amended independent claim 1.

With respect to dependent claims 2, 5-7, 11, 16, 19-21, 25, 30-32, 35-37, 41, 42, 46, 49-51, 55, 56, 64, 67-69, 73, 74, 79, 82-84, 88, 89, and 91; claims 2, 5-7, and 11 depend from amended independent claim 1, claims 16, 19-21, and 25 depend from amended independent claim 15, claims 30-32, 35-37, 41, and 42 depend from amended independent claim 29, claims 46, 49-51, 55, and 56 depend from amended independent claim 45, claims 64, 67-69, 73, and 74 depend from amended independent claim 63, and claims 79, 82-84, 88, 89, and 91 depend from amended independent claim 78. As mentioned above, each of amended independent claims 1, 15, 29, 45, 63, and 78 are considered patentably distinguishable over the proposed combination of Schmidt, Herz, and Maes. Thus, dependent claims 2, 5-7, 11, 15, 16, 19-21, 25, 29-32, 35-37, 41, 42, 45, 46, 49-51, 55, 56, 63, 64, 67-69, 73, 74, 78, 79, 82-84, 88, 89, and 91 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

With respect to dependent claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-28, 33, 34, 38-40, 43, 44, 47, 48, 52-54, 57-62, 65, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92; claims 3, 4, 8-10, 12-14, and 60 depend from amended independent claim 1, claims 17, 18, 22-24, 26-28, and 60 depend from amended independent claim 15, claims 33, 34, 38-40, 43, 44, and 61 depend from amended independent claim 29, claims 47, 48, 52-54, 57, 58, and 62 depend from amended independent claim 45, claims 65, 66, 70-72, and 75-77 depend from amended independent claim 63, and claims 80, 81, 85-87, 90, and 92 depend from amended independent claim 78. As mentioned above, each of amended independent claims 1, 15, 29, 45, 63, 78, 93, and 94 are considered patentably distinguishable over the proposed combination of Schmidt, Herz, Maes and Shepherd. Thus, dependent claims 3,

4, 8-10, 12-14, 17, 18, 22-24, 26-28, 33, 34, 38-40, 43, 44, 47, 48, 52-54, 57-62, 65, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For the reasons set forth herein, the Applicants submit that claims 1-94 are not rendered obvious by the proposed combination of Schmidt, Herz, Maes and Shepherd. The Applicants further submit that claims 1-94 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of claims 1-94 under 35 U.S.C. § 103(a) be reconsidered and that claims 1-94 be allowed.

### **THE LEGAL STANDARD FOR OBVIOUSNESS REJECTIONS UNDER 35 U.S.C. § 103:**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that

the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

**CONCLUSION:**


In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although Applicants believe no fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**.

**Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.**

Respectfully submitted,

8/16/05  
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